

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Eureka Homestead Society)
New Orleans, Louisiana)
[OTS Docket No. 3193])

OTS Order No.: DAL-94-27

Dated: June 30, 1994

ORDER TO CEASE AND DESIST

WHEREAS, Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead" or the "Association"), OTS Docket No. 3193, by and through its Board of Directors ("Board"), has executed a Stipulation and Consent to the Entry of an Order to Cease and Desist ("Stipulation"); and

WHEREAS, Eureka Homestead, in the Stipulation, has consented to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where Eureka Homestead has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED that Eureka Homestead and its directors, officers, employees, and agents, shall cease and desist from any action (along or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any violation of, or any unsafe or unsound practice relating to:

1. Section 562.1 of the OTS Regulations, 12 C.F.R. § 562.1 (regarding regulatory reporting requirements);
2. Section 563.173 of the OTS Regulations, 12 C.F.R. § 563.173 (regarding forward commitments limitations and recordkeeping);
3. Section 563.180(a) of the OTS Regulations, 12 C.F.R. § 563.180(a) (regarding periodic reports);
4. Operating with appropriate internal controls; and
5. Operating with adequate oversight and direction over the affairs of the Association.

IT IS FURTHER ORDERED THAT:

1. All references to the United States Code are as amended.

INVESTMENTS

6. (a) Within 60 days of the effective date of this Order, the Board of Directors shall adopt and submit to the Regional Deputy Director for the Dallas Area Office of the Midwest Region of the OTS or his successor or designee ("Regional Deputy Director") for review, a revised written investment policy that is consistent with the safe and sound operation of the Association and the business plan required by Paragraph 12 of this Order ("Investment Policy").
 - (b) The Investment Policy required in Subparagraph 6(a) shall contain the following:
 - (i) all provisions set forth in the investment policy that were submitted by the Board of Directors on March 7, 1994 to the OTS including, but not limited to the provisions (a) addressing internal controls on investments and the segregation of investment and accounting functions, (b) incorporating the requirements of Generally Accepted Accounting Principles ("GAAP"), relevant OTS Bulletins and 12 C.F.R. §§ 563.173, 563.174, and 563.175, and (c) requiring the maintenance of detailed investment register; and
 - (ii) provisions ensuring adequate Board and management oversight of investment activities, which shall incorporate the responsibilities of the board designated representative to reconcile broker confirmations to the investment register and which shall require at least annual reviews and recommendations regarding the financial condition of the banks in which the Association has been authorized to invest in fed funds.
 - (c) The Association shall comply with the Investment Policy as adopted by the Board of Directors, including any modifications to such policy directed by the Regional Deputy Director or the Board of Directors.
 - (d) The Board of Directors shall review the results of the Association's operations on at least a quarterly basis and shall determine what modifications, if any, to the Investment Policy are necessary and submit any such modifications to the Regional Deputy Director for review.
7. (a) All purchases and sales of investments shall be recorded on the books and records of the Association and shall be approved by the President and the Chief Financial Officer.
 - (b) The Board of Directors shall review the investments currently held by the Association on at least a quarterly basis and such review shall be set forth in the minutes of the Board meetings.

8. The Association shall not initiate speculative or high risk trading activities without the approval of the Regional Deputy Director.

INTERNAL CONTROLS SYSTEM

9. (a) The Association shall maintain adequate internal controls consistent with safe and sound operations. Such internal controls shall provide for:
- (i) checks and balances of directors', officers', and employees' duties;
 - (ii) the continued utilization of an individual who will perform the function of controller at the Association in a competent manner with adequate expertise for that position;
 - (iii) the continued utilization of an individual who will perform the function of compliance officer at the Association in a competent manner with adequate expertise for that position;
 - (iv) an organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;
 - (v) effective risk management;
 - (vi) timely and accurate financial, operational, and regulatory reports;
 - (vii) adequate procedures to safeguard and manage assets, including requiring the independent auditor to confirm all securities held in safekeeping or pledged and the existence of any margin accounts;
 - (viii) compliance with applicable laws and regulations;
 - (ix) provision for the elements contained in Section 110 of the Thrift Activities Handbook, dated June 1990;
 - (x) a system for periodic review of corporate resolutions adopted by the Board and the activity engaged in by the Association pursuant to those resolutions; and
 - (xi) review of all wire transfers to ensure that the proper accounting for such transfers and proper controls have been implemented.
- (b) Within 60 days of the effective date of this Order, the Board of Directors shall adopt and submit to the Regional Deputy Director for review, an internal controls policy detailing the measures the Association shall take to maintain adequate internal controls in accordance with Subparagraph 9(a) of this Order.

10. The Association shall comply with the internal controls system as adopted by the Board of Directors including any modifications to such system required by the Regional Deputy Director or the Board of Directors.

INDEPENDENT AUDIT

11. Within 90 days after the end of the fiscal year, the Association shall obtain an annual independent audit that complies with 12 C.F.R. § 571.2 or any successor regulation addressing audits of savings associations. The audit shall be performed in accordance with generally accepted accounting standards and OTS guidelines and shall include (i) a reconciliation of the thrift financial report as of the audit date to the audited financial statements and reconciliation of any other financial statements as of the audit date that the Regional Director for the Midwest Region of the OTS or his successor or designee ("Regional Director") may designate, (ii) an opinion on the system of internal controls maintained by the Association, and (iii) confirmation of all securities held in safekeeping or pledged and all margin accounts.

BUSINESS PLAN

12. (a) Within 60 days of the effective date of this Order, the Board of Directors shall prepare and submit to the Regional Deputy Director for review, a written three-year business plan ("Business Plan"), which will include, at a minimum, the following:
- (i) financial projections of major balance sheet and income statement components;
 - (ii) a detailed asset/liability management policy that complies with OTS Thrift Bulletin 13, dated January 26, 1989, and 12 C.F.R. § 563.176; and that adequately addresses the interest rate risk of the Association;
 - (iii) a detailed budget with respect to the overall operations of the Association;
 - (iv) a narrative description of the strategy to be implemented to manage the Association in such manner as to make it profitable;
 - (v) interest-rate scenario assumptions upon which the Business Plan is based and assumptions regarding the cost of funds; and
 - (vi) a plan for maintaining the regulatory capital at the levels required under 12 C.F.R. Part 567 and the status of a well capitalized institution under 12 C.F.R. Part 565.

Such Business Plan shall be consistent with the Investment Policy provided for in Paragraph 6 of this Order.

- (b) The Board of Directors shall require management to establish procedures to monitor the Association's actual results against these projections and to provide for appropriate adjustments to the Business Plan.
- (c) Beginning the first quarter following the submission of the Business Plan to the Regional Deputy Director pursuant to this Paragraph, the Association shall provide the Regional Deputy Director with quarterly progress reports comparing the actual performance to the projections set forth in the Business Plan and providing written explanation of any variances of ten percent (10%) or more from the Business Plan by the twentieth (20th) day after the end of the quarter.
- (d) The Association shall update the three-year Business Plan on a semiannual basis and submit to the Regional Deputy Director for review the updated Business Plan by the thirtieth (30th) day after the six month period.
- (e) The Association shall comply with the Business Plan as adopted by the Board of Directors including any modifications to such plan by required the Regional Deputy Director or the Board of Directors.

ASSET GROWTH

- 13. Without the prior written approval of the Regional Director, the Association shall not increase its Total Assets as of December 31, 1993 by more than the cumulative net interest credited on deposit liabilities since December 31, 1993.

THIRD-PARTY CONTRACTS; TB 50 REVIEW

- 14. The Association shall not enter into any third party contracts outside the normal course of business pursuant to OTS Thrift Bulletin 50, dated November 19, 1991, unless it first (a) provides a minimum of thirty days advance notice of a proposed contract and (b) receives the prior written approval of the Regional Director.

BOARD OF DIRECTORS REORGANIZATION

- 15. (a) The Board of Directors shall use its best efforts to maintain a directorate that is competent, qualified, and knowledgeable and that includes members with the accounting and/or banking expertise necessary to properly oversee management's activities.
- (b) The Board of Directors shall take steps to ensure that management is operating the Association in a safe and sound manner, and ensure that the Association complies with applicable laws, regulations, rulings, and supervisory directives.
- (c) The Board of Directors must fulfill their fiduciary duties and follow the guidelines set forth in Section 140 of the Thrift Activities Handbook, dated June 1990.

CHANGES IN DIRECTORS OR EXECUTIVE OFFICERS; TERMS OF EMPLOYMENT AND
GOLDEN PARACHUTE PAYMENTS

16. (a) As required by Section 32 of the FDIA, 12 U.S.C. § 1831i, and 12 C.F.R. § 574.9, the Association shall provide at least 30 days prior written notice of any additions to its directorate or executive officer staff to the OTS before the employment becomes effective.
- (b) Pursuant to OTS Regulatory Bulletin 27a, dated March 5, 1993, the Association shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any director or senior executive officer of the Association or any subsidiary thereof, unless it first (i) provides a minimum of thirty days advance notice of the proposed transaction and (ii) receives a written notice of non-objection from the Regional Director.
- (c) The Association shall not make any "golden parachute payment", as that term is defined in Section 18(k) of the FDIA, 12 U.S.C. § 1828(k), and as it may be further defined in regulations adopted by the Federal Deposit Insurance Corporation ("FDIC") under that authority, unless it first (i) provides a minimum of thirty days advance notice of the proposed payment and (ii) receives a written notice of non-objection from the Regional Director with regard thereto.
- (d) The Association shall not, without the prior written approval of the Regional Deputy Director:
- (i) increase the rate of compensation to any of its directors, officers, or employees, except for individual merit increases for employees and officers in accordance with its standard personnel policy adopted prior to the effective date of this Order; or
 - (ii) enter into, amend or renew any collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit, or other employee benefit plans, or other employment contracts, except for the renewal of standard insurance policies already in existence as of April 30, 1994, with any director, officer, or employee. As used in this paragraph, compensation includes, but is not limited to, salary, bonuses, commissions, fees of any kind, deferred or otherwise, and the purchase of any residence.

DIRECTOR RESPONSIBILITY

17. Notwithstanding the requirements of this Order that the Board of Directors submit various matters to the Regional Director for the purpose of

receiving his approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual member's continuing fiduciary duty. The Board of Directors shall have the ultimate responsibility for overseeing the safe and sound operation of the Association at all times, including compliance with the determinations of the Regional Director as required by this Order.

COMPLIANCE WITH ORDER

18. (a) The Board of Directors and officers of the Association shall take immediate action to cause the Association to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Association to continue to carry out the provisions of this Order.
- (b) The Board of Directors, on a monthly basis, shall adopt a board resolution (the "Compliance Resolution") formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar month, the Association has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall: (i) specify in detail how, if at all, full compliance was found not to exist, and (ii) identify all notices of exemption issued by the Regional Director that were outstanding as of the date of its adoption.
- (c) The minutes of the meeting of the Board of Directors shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such Director's reasoning for opposing or abstaining.
- (d) No later than the 25th Calendar Day of the month following the end of a calendar quarter, beginning with the end of the first calendar quarter following the Effective Date, the Association shall provide to the Regional Deputy Director a certified true copy of the Compliance Resolution[s] adopted at the Board meeting of each month in such calendar quarter. The Board of Directors, by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Deputy Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Association.
- (e) The Board of Directors shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

MISCELLANEOUS

DEFINITIONS

19. All technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA or OTS Memoranda. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

SUCCESSOR STATUTES, REGULATIONS, GUIDANCE, AMENDMENTS

20. Reference in this Order to provisions of statutes, regulations, OTS Memoranda, OTS Bulletins, and sections of the Thrift Activities Handbook shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

DURATION, TERMINATION OR SUSPENSION OF ORDER

21. (a) This Order shall: (i) become effective upon its execution by the OTS, through its authorized representative whose signature appears below and (ii) remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).
- (b) The Regional Director in his or her sole discretion, may, by written notice, suspend any or all provisions of this Order.

TIME LIMITS

22. Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted.

EFFECT OF HEADINGS

23. The Section headings herein are for convenience only and shall not affect the construction of this Order.

SEPARABILITY CLAUSE

24. In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

NO VIOLATIONS OF LAW, RULE, REGULATION OR POLICY STATEMENT AUTHORIZED; OTS NOT RESTRICTED

25. (a) Nothing in this Order shall be construed as: (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting or estopping the OTS from taking any action(s) that it believes are

appropriate in fulfilling the responsibilities placed upon it by law.

- (b) As an Association chartered under State law and subject to regulation and supervision by a State regulatory authority, the Association may be subject to various restrictions imposed by the appropriate State regulatory authority. The Association must continue to comply with any such restrictions, notwithstanding the receipt by the Association of authorizations or notices of non-objection of the Regional Director, except to the extent that such restrictions have been deemed to be pre-empted by Federal law.

SUCCESSORS IN INTEREST/BENEFIT

26. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Order.

THE OFFICE OF THRIFT SUPERVISION

By: *F. R. Casteel*
Frederick R. Casteel
Regional Director
Midwest Region

Date: 6-30-94

**UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION**

In the Matter of)

Eureka Homestead Society)
New Orleans, Louisiana)
[OTS Docket No. 3193])

OTS Order No.: DAL-94-27

Dated: June 30, 1994

**STIPULATION AND CONSENT TO THE ENTRY OF AN
ORDER TO CEASE AND DESIST**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead Society" or the "Association"), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);¹ and

WHEREAS, Eureka Homestead Society desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist hereby stipulates and agrees to the following terms:

1. JURISDICTION

- (a) Eureka Homestead Society is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).
- (b) Pursuant to section 8(b) of the FDIA, 12 U.S.C. § 1818(b), the appropriate Federal banking agency may issue a cease and desist order against any insured depository institution that engages in unsafe or unsound practices in conducting its business and/or violates a rule or regulation.
- (c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking agency" to maintain an administrative proceeding against such a savings association. Therefore, Eureka Homestead Society is subject to the jurisdiction of the OTS to initiate and maintain an administrative proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

1. All references to U.S.C. are as amended.

2. OTS FINDINGS OF FACT

The OTS is of the opinion that the grounds of 12 U.S.C. § 1818(b) have been met in that Eureka Homestead Society committed the following regulatory violations and unsafe and unsound practices:

- (a) The Association, through actions and omissions of its former managing officer, violated 12 C.F.R. § 562.1 by failing to prepare Thrift Financial Reports and association records in accordance with OTS requirements, reflecting the \$8.2 million in losses that had incurred from securities trading activity conducted by the former managing officer, which created a substantial misrepresentation of the Association's operating results, capital, and interest rate risk exposure;
- (b) The Association, through actions and omissions of its former managing officer, violated 12 C.F.R. § 563.173 by exceeding investment limitations as a result of these trading activities and by failing to ensure proper recordkeeping of securities investments;
- (c) The Association, through actions and omissions of its former managing officer, violated 12 C.F.R. § 563.180(a) by failing to properly report the losses on securities trading activity; and
- (d) The Association did not establish a system of internal controls that would provide for the segregation of the investment and accounting functions which had been raised as a prior supervisory concern in 1992.

3. CONSENT

Eureka Homestead Society consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. FINALITY

The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. WAIVERS

- (a) Eureka Homestead Society waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

- (b) Eureka Homestead Society acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought by the OTS or another governmental entity.

6. SIGNATURE OF DIRECTORS

Each Director signing this Stipulation attests that he voted in favor of a resolution authorizing the execution of the Stipulation.

WHEREFORE, Eureka Homestead Society, by a majority of its directors, execute this Stipulation and Consent to the Entry of an Order to Cease and Desist, intending to be legally bound hereby.

Eureka Homestead Society
by a majority of its directors

Joe S. Dickson
Director

M. Ellis Frater, Jr.

M. Ellis Frater, Jr.
Director

Arthur L. Jung, III

Arthur L. Jung, III
Director

John Hampden Lewis

John Hampden Lewis
Director

Edouard C. Carrere, Jr.

Edouard C. Carrere, Jr.
Director

Oscar M. Gwin

Oscar M. Gwin
Director

Lawrence F. Babst

Lawrence F. Babst
Director

Philip E. James, Jr.

Philip E. James, Jr.
Director

Stephen B. Johnson

Stephen B. Johnson
Director

ACCEPTED BY:
OFFICE OF THRIFT SUPERVISION

Frederick R. Casteel

Frederick R. Casteel
Regional Director
Midwest Region

Date: 6-30-94